



# **EMPLOYMENT DISPUTE RESOLUTION PLAN**

## **NORTHERN DISTRICT OF FLORIDA**

APPROVED ON DECEMBER 13, 2017  
BY BOARD OF JUDGES

APPROVED ON DECEMBER 14, 2017  
BY ELEVENTH CIRCUIT JUDICIAL COUNCIL

MAINTAINED BY  
UNITED STATES DISTRICT COURT  
OFFICE OF THE CLERK  
JESSICA J. LYUBLANOVITS

## **CHAPTER I. GENERAL PROVISIONS.**

### **§1 Preamble.**

This is the Employment Dispute Resolution Plan (“EDR Plan”) of the United States District Court for the Northern District of Florida.

On its effective date, this Plan supersedes all Employment Dispute Resolution or Equal Employment Opportunity Plans previously adopted by this court. Any complaint pending on the effective date of this Plan shall continue to be processed and considered under the procedures established under the EDR Plan in effect at the time when the complaint was filed. Any complaint filed after the effective date of this Plan shall be processed under the provisions of this Plan regardless of whether the actions giving rise to such a complaint occurred before the effective date of this Plan.

The Judicial Council of the Eleventh Circuit must approve a modification of this Plan.

Although intended to be the exclusive remedy for employees with respect to the rights and protections afforded, this Plan does not apply to complaints against a judicial officer under 28 U.S.C. § 351(a), which provides for complaints against a judicial officer based on allegations that the officer engaged in conduct prejudicial to the efficient and expeditious administration of the business of the courts or is unable to discharge the duties of office by reason of mental or physical disability. A Section 351(a) complaint is governed by 28 U.S.C. §§ 351– 364.

The definition of “employee” excludes a judicial officer and chambers’ staff. While this limitation means that a member of these groups cannot file a claim under this Plan, a claim can be filed against a judicial officer under 28 U.S.C. §351(a) when the officer engages in conduct prejudicial to the efficient and expeditious administration of the business of the courts.

The distinction with regard to judicial chambers’ staff is necessary given the unique, confidential relationship that chambers’ staff have with the judicial officer they serve. A judicial officer must be able to rely, without question, on the discretion, loyalty, and fitness of his or her staff, and therefore a judicial officer must be permitted to decide who those integral staff members

will be. Accordingly, a protocol that would allow others to dictate to the judicial officer those employees whom the officer must hire or retain would undermine fundamental and constitutional concepts of judicial independence.

## **§2 Scope of coverage.**

This Plan is the exclusive means for an employee to seek redress of the rights covered by the Plan. In every instance, the respondent is the employing office responsible for redressing, correcting, or abating the violation(s) alleged in the complaint. No individual liability of any person is established or enforced under this Plan. The remedies established under this Plan are in lieu of any other legal or equitable remedies with respect to the rights subject to redress under this Plan.

A complaint under this Plan may be made by an employee, as defined in Section 3, Part F of this Chapter. The term “employee” includes a court unit head and the unit’s staff, the Federal Defender and staff, and a bankruptcy administrator and staff.

This Plan neither governs nor applies to the award of contracts or subcontracts or to an employment decision by a contractor or subcontractor.

## **§3 Definitions.**

- A.** “Adverse employment action” means a termination, demotion, transfer, or reassignment; loss of pay, benefits, or awards; or any other employment action that is materially adverse to the employee’s job status, compensation, terms, responsibilities, or the employee’s working conditions.
- B.** “Court” means the court (district or bankruptcy) in which the employing office responsible for, and capable of, redressing, correcting, or abating the violation alleged in the complaint is located. In the case of disputes involving a Federal Defender, the term “court” refers to the court of appeals.
- C.** “Days” means a calendar day.

**D. “Disability” means**

1. a physical or mental impairment that substantially limits one or more of the major life activities of an employee,
2. a record of such an impairment, or
3. being regarded as having such an impairment.  
*See 42 U.S.C. §12102(1).*

**E. “Discrimination” means an adverse employment action taken against an employee because the employee is a member of a protected category.**

**F. “Employee,” subject to exclusions listed below, means a current employee, an applicant for employment who has been interviewed, and a former employee who was terminated or removed from employment, but who had no reasonable opportunity to raise their claim during their employment. Absent an extraordinary circumstance, an employee will be considered to have been provided a reasonable opportunity to raise a claim if the employee was provided notice of the termination/removal and the reason for termination and had at least one week to respond before separation from employment.**

**Exclusions.** The term “employee” does not include:

- a student intern or extern who serves the court on a voluntary or gratuitous basis;
- a probationary employee for one year or less;
- a judicial officer or an applicant for a non-Article III judicial office;
- a member of, or applicant for, a judicial chambers’ staff ;
- a private attorney representing or seeking to represent an indigent defendant under the Criminal Justice Act;

- a criminal defense investigator not employed by the Federal Defenders' office;
- a private attorney administering a Chapter 7 or 11 bankruptcy estate;
- a position in connection with pending or potential litigation (such as a Commissioner, a counselor or mediator, a Special Master, a monitor, a court-appointed expert, or counsel appointed to represent a litigant or potential litigant); or
- a position other than an employee of an "employing office," as that term is defined below.

**G.** "Employing office" means an office of the United States District Court for the Northern District of Florida, including the district court, and the bankruptcy court, including the offices of the district court executive, the Federal Defender, a staff attorney, clerk of the district or bankruptcy court, probation, and any other offices that might be created in the future. For purposes of coverage under this EDR Plan, the court is treated as the employing office of the clerks of the court and the chief probation officer. The clerk is treated as the employing officer of court reporters and courtroom deputies. Depending on the identity of the decision maker(s) or the identity of the person with the power to provide a remedy for an adverse action, the clerk of the court, the court, or the supervising judge is treated as the employing officer of a pro se law clerk. The chief probation officer is treated as the employing officer of all staff in the probation office. A Federal Defender, a bankruptcy administrator, and their respective staff are subject to the EDR Plan of the Eleventh Circuit, rather than the EDR Plan of the district in which they serve.

**H.** "Harassment" (other than sexual harassment) means an action taken or comment directed at an employee (1) based upon the latter's status as a member of a protected category (2) that is severe or pervasive enough to alter the terms or conditions of employment and create an abusive working environment.

- I.** “Judicial chambers’ staff” means a judicial officer’s personal staff, which has fewer than ten full-time employees and whose members are selected for their positions on the staff by the judicial officer and are supervised by that officer. This term includes a staff attorney or pro se law clerk who is assigned to or supervised by a judicial officer.
- J.** “Judicial officer” means a United States district judge, a United States magistrate judge, or a United States bankruptcy judge
- K.** “Protected activity” means filing a claim (other than a frivolous or malicious discrimination claim or knowingly presenting false information as discussed in Chapter VIII, Section 2, Part A) under this Plan, participating in or assisting with, in any manner, an investigation or proceeding under this Plan, or otherwise overtly opposing discrimination or harassment that is prohibited by this Plan.
- L.** “Protected category” includes race, color, religion, sex (including pregnancy), national origin, age (at least 40 years of age at the time of the alleged discrimination), and disability.
- M.** “Retaliation” means an adverse employment action against an employee for engaging in protected activity.
- N.** “Sexual harassment” as proscribed by Chapter II, Section 1, means:
- 1.** deliberate or repeated unsolicited and unwelcomed verbal comments, gestures, or physical contact of a sexual nature that are severe or pervasive enough to alter the conditions of employment and create an abusive working environment, and
  - 2.** demands, solicitations, offers, invitations, or other inducements for sexual relations between an employee and the employee’s supervisor that explicitly or implicitly indicate that future personnel decisions about employment, advancement, evaluation, wages, assignment of duties, or other conditions of employment or advancement might, would, should, or will be affected by the existence or continuation of such sexual relations.

- O. “Unit head” means the person most directly involved in, or responsible for, the employment decisions relating to employees in the particular unit and includes, e.g., the district executive; a senior staff attorney; the clerk of the court (for both traditional clerk’s office staff and other employees in the clerk’s office including court reporters, courtroom deputies, and pro se law clerks who report to the clerk); the chief probation officer; the bankruptcy administrator or clerk; and the Federal Defender.

## **CHAPTER II. EQUAL EMPLOYMENT OPPORTUNITY AND ANTI-DISCRIMINATION RIGHTS.**

**§1 General.** Discrimination against an employee based on race, color, religion, sex (including pregnancy), sexual harassment, national origin, age (at least 40 years of age at the time of the alleged discrimination), or disability is prohibited. Both harassment of an employee based on any protected category and retaliation for engaging in any protected activity are prohibited.

- A. The provisions of this Plan shall not be construed as modifying or reducing qualification standards for employment established by the Judicial Conference. There are no positions for which race, color, sex, religion, national origin, age (except as indicated in Section 3, Part A of this Chapter), or any combination of such factors, is an occupational qualification.
- B. Special recruitment efforts may properly be directed towards a qualified person in an unrepresented or under-represented segment of the available labor force. However, no special recruitment effort should imply that a qualified person from another segment of the available labor force is disqualified, or in any way discouraged from, becoming an applicant. A vacancy shall be publicized in a manner likely to reach a qualified person in each segment of the available labor market. This Plan shall not be construed as calling for employment or promotion to a position for which the person is not qualified or as providing anyone with entitlement to preferential treatment based on race, color, religion, sex, national origin, age, or disability.

- C. Each employee of the court is always an “AT-WILL” employee, unless otherwise provided by law.

## **§2 Special provisions relating to disabilities.**

- A. For the definition of disability, see Chapter I, Section 3, Part D.
- B. The provisions of Section 1 of this Chapter do not preclude consideration of a person’s physical or mental impairment if the latter would significantly affect that person’s ability to perform an important aspect of the job in question. Before a person is rejected for, or removed from, a job because of physical or mental impairment, the unit head should consider whether a reasonable accommodation would permit the employee to perform the essential duties of the position. In deciding whether a requested accommodation is reasonable, the employing office may inquire whether the Administrative Office will pay the cost of that accommodation, and, if not, the employing office may consider the resulting budgetary constraint in deciding whether to offer the requested accommodation.
- C. A probation or pretrial services officer must meet the fitness for duty standards, and requiring compliance with such standards does not constitute discrimination on the basis of disability.

## **§3 Special provisions relating to age.** Section 1 of this Chapter relating to age:

- A. is subject to special provisions of law and regulations approved by the Judicial Conference with respect to the maximum age at initial hiring of probation and pretrial services officers and officer assistants and to mandatory retirement ages;
- B. does not prohibit consideration of training, experience, and education, notwithstanding the fact that consideration may weigh in favor of older persons; and
- C. does not prohibit (subject to the protection afforded in Section 2 of this Chapter) consideration of a person’s physical or mental impairment or a limitation that significantly affects that person’s



ability to perform an important aspect of a job even though that impairment or limitation might arguably result from aging.

- §4 Special provision relating to pregnancy and leave.** Notwithstanding the prohibition on discrimination based on pregnancy and disability, any leave requested by an employee based on pregnancy or disability is subject to the particular leave policy applicable to that employee. Further, the Family and Medical Leave Act (“FMLA”) applies only to an employee who is covered by the FMLA and who has been employed by the federal government for at least one year. *See* Chapter III. Whether a law clerk is subject to the FMLA is, in all circumstances, at the discretion of the law clerk’s employing judge. If not under a leave system, a law clerk is entitled to no leave as a result of a pregnancy during the limited term of the clerkship.

### **CHAPTER III. FAMILY AND MEDICAL LEAVE RIGHTS.**

- §1 General.** The Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq., applies to a court employee in the manner prescribed in the *Guide to Judiciary Policy*. Coverage is limited to an employee covered by the annual and sick leave program established under 5 U.S.C. §6301 et seq., and who has completed at least one year of civilian service with the federal government.

### **CHAPTER IV. EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE UNIFORMED SERVICES.**

- §1 General.** An employing office must not discriminate against an eligible employee or deny an eligible employee reemployment rights or benefits under the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. §4301-4335.

### **CHAPTER V. OCCUPATIONAL SAFETY AND HEALTH PROTECTIONS.**

- §1 General.** Each employing office must use best efforts to insist that the General Services Administration (“GSA”) provide a place of employment free from a recognized hazard that causes or is likely to cause death or physical harm to an employee. Because a court office and unit occupies space and utilizes facilities provided by the GSA, a complaint that seeks a

remedy exclusively within the jurisdiction of the GSA is not cognizable under this Plan.

## **CHAPTER VI. POLYGRAPH TESTS.**

- §1 General.** Unless required for access to classified information, or otherwise required by law, no employee may be required to take a polygraph test.

## **CHAPTER VII. WHISTLEBLOWER PROTECTION.**

**§1 General.**

- A.** Any employee who has authority to take, direct others to take, recommend, or approve any personnel action must not take an adverse employment action with respect to an employee (excluding an applicant for employment) because of that employee's disclosure of information to a supervisor or manager of the employing office, a judicial officer of the court, or the Administrative Office of the United States Courts, if a reasonable employee would believe—and if the employee actually believes—that the information evidences gross mismanagement, a gross waste of funds, a substantial and specific danger to public health or safety, or a violation of the law.

No adverse action shall be taken against an employee who discloses information to an appropriate law enforcement agency if a reasonable person would believe—and if the employee actually believes—that the information evidences a violation of the law.

- B.** This prohibition on adverse action, however, does not apply to a disclosure that:
- 1.** is prohibited by law,
  - 2.** reveals case-sensitive information, sealed material, or the deliberative processes of the federal judiciary (as outlined in the *Guide to Judiciary Policy*, Vol. 20, Ch. 8),
  - 3.** reveals information that would endanger the security of any federal judicial officer or other person, or

4. otherwise contravenes a reasonable policy established by the employing office concerning workplace confidentiality or non-disclosure of information obtained in the workplace.

## **CHAPTER VIII. DISPUTE RESOLUTION PROCEDURES.**

**§1 Procedure for consideration of alleged violations.** An employee who claims the denial of a right granted under Chapters II through VII of this Plan may seek resolution of the claim by the procedure provided in this Chapter. This Plan comprises:

- A. consultation,
- B. mediation,
- C. a hearing before the chief judge (or a judicial officer designated by the chief judge), and
- D. review of the hearing decision under procedures established by the Judicial Council of the circuit.

This Plan neither precludes nor discourages any person from resolving a claim of discriminatory conduct by informal but direct discussion with the persons involved. However, no informal discussion or conference suspends, extends, or tolls the time within which a request for consultation, mediation, or a complaint may be timely filed under this Plan; nor does a failure to try to resolve the claim informally with the person involved present a bar to a complaint under this Plan.

**§2 General provisions and protections.**

- A. **Prohibition against retaliation.** The court, a court unit head, or their designees must not retaliate against, coerce, or interfere with a complainant or anyone participating in the filing and processing of a complaint. However, the filing or pursuit of a frivolous or malicious claim, or the presentation of knowingly false information, if relevant, may be considered in an employment decision or in the evaluation of the merits of a discrimination complaint involving the same person.

If the hearing officer determines that the complaint was filed to harass or to undermine good management or discipline by a supervisor or within an office, the hearing officer may recommend to the appointing authority disciplinary action against the complainant.

- B. Right to representation.** A person invoking the dispute resolution procedures of this Plan, a person alleged to have acted in violation of this Plan, or a person arguably affected adversely by the resolution of a complaint under this Plan (such as a person whose promotion is challenged as a discriminatory act), has the right at the person's own expense to legal representation

However, because workplace disputes can create disharmony, no fellow employee or supervisor within the unit can act as the representative of any involved or affected party to the dispute. Therefore, a fellow employee within the unit may act as a representative only upon the concurrence of both the unit head and the chief judge, or, if the latter are disqualified, the next most senior active judge.

- C. Case preparation.** An employee involved in, or affected by, dispute resolution must continue to perform the employee's duties and must limit the official duty time spent on case preparation. To the extent that case preparation must occur during official duty hours, the person seeking to utilize these duty hours must apply in writing, to the EDR Coordinator for authorization to use official time for case preparation, must specify the time sought, must specify the purpose to which that time will be devoted, and must identify any other court personnel who might be involved. The EDR coordinator should consult with the officer conducting the segment of the proceedings for which the preparation is sought (i.e., the dispute mediator or the hearing officer) prior to granting or denying the request. The decision of the EDR coordinator is final and not subject to review, nor may the decision be the subject of a complaint under this Plan. No request for utilization of duty hours must be made by the unit head who is responding on behalf of the court.

- D. Notice.** At the consultation stage, communication must remain confidential as contemplated in Section 5, Part C (3) of this Chapter. Beginning at the mediation stage and until final resolution of the complaint, every person allegedly involved in a violation of this Plan has the right to reasonable notice of the charge and an opportunity to respond. The EDR Coordinator must inform the complainant at the initial counseling stage how this notice provision may eventually affect the confidentiality of the complaint.
- E. Extensions of time.** The chief judge of the court or other designated presiding judicial officer may extend for good cause any deadline in this Plan.
- F. Dismissal of claim.** On the motion of the chief judge or the presiding judicial officer or a party or on the recommendation of the EDR Coordinator, the chief judge or presiding judicial officer at any time in the proceedings can dismiss in writing a claim because the claim fails to allege a violation of a right or protection under this Plan, is plainly without merit, is untimely, is repetitive of a previous claim, is frivolous, fails to state a claim upon which relief may be granted, or advances a claim not presented during mediation.
- G. Records.** At the conclusion of a proceeding under this Plan, the files, reports, and other papers from the proceeding will be filed with the court's EDR Coordinator. No files, reports, or other papers from a proceeding will be filed in any employee's personnel folder, except as necessary to implement or document an official personnel action, as well as to document the filing of a frivolous or malicious claim by the complainant, which is discussed in Chapter VIII, Section 2, Part A.
- H. Confidentiality.** The court or employing office to the extent possible must protect the confidentiality of allegations filed under this Plan. However, to assess the credibility of an assertion by a complainant or respondent, information about an allegation filed under this Plan may be shared on a need-to-know basis. This Section should be read in conjunction with the confidentiality provisions in Chapter VIII, Section 2, Part G, Section 5, Part C (3) and Section 6, Part A (5).

**§3 Designation and duties of employment dispute resolution coordinator.**

The court must designate an EDR Coordinator. The duties of the EDR Coordinator include:

- A. providing information to the court and employees about this Plan;
- B. establishing and maintaining official files of the court pertaining to procedures and complaints and other matters initiated and processed under this Plan;
- C. consulting with a person, in accord with Section 5 of this Chapter;
- D. collecting and analyzing data and other information pertaining to this Plan;
- E. drafting for submission to the court an annual report to the Administrative Office;
- F. recommending to the court amendments to this Plan; and
- G. sending to the chief judge a copy of any Form 2, 3, or 4 that comes into the EDR Coordinator's possession, as well as a copy of any notice described in Section 5, Part E of this Chapter.

The person serving as EDR Coordinator on the effective date of this Plan shall automatically become the initial EDR Coordinator under this Plan.

When the EDR Coordinator is unable to oversee, or disqualified from participation in, a particular claim, the chief judge must name an Alternate EDR Coordinator to handle the claim.

**§4 General provisions relating to unavailability and disqualification.**

- A. The chief judge may either by a continuing delegation or by a delegation for purposes of a particular matter, designate another judicial officer of the court to perform the duties assigned in this Section to the chief judge.

- B.** By written request to the chief judge, a party may seek disqualification of the EDR Coordinator, a judicial officer, an employee, or another person involved in, or assigned to oversee, a particular dispute resolution proceeding. The written request must describe why the person should be disqualified.

## **§5 Consultation.**

- A. Initiating a proceeding; formal request for counseling.** An employee who believes that the employee's rights under Chapters II through VII of this Plan have been violated must first request consultation with the EDR Coordinator.

- B. Form and manner of requests.** A request for consultation:

1. is to be submitted to the court's EDR Coordinator;
2. must be made in writing on the form attached to this Plan as Form 1; and
3. must be made within thirty days of the alleged violation or within thirty days after the employee, if reasonably diligent, should have known of the alleged violation.

- C. Procedures.**

1. **Oversight of consultation process.** Consultation must be conducted by the EDR Coordinator, unless the EDR Coordinator or Alternate EDR Coordinator is disqualified from serving or is otherwise unavailable. In that event, the chief judge of the court must designate another qualified person to perform this function. The EDR Coordinator shall promptly provide a copy of the request for consultation to the unit executive and to the chief judge of the court. If the dispute involves an alleged violation of this Plan by a judicial officer, the person who conducts the consultation shall be a judicial officer designated by the chief judge of the circuit, in consultation with the chief judge of the district, unless either is the judicial officer who is the subject of the complaint, in which

case, he or she will be replaced in the consultation process by the next most senior active judge of the circuit or of the district.

2. **Purposes of consultation.** The purpose of the consultation process is to informally discuss the employee's concerns and to elicit information about the challenged action; to advise the employee of the rights, responsibilities, and procedures under this Plan; to contact the court unit executive of the employee's employing office to attempt to resolve the disputed matter; and to assist the employee in an early resolution.
3. **Confidentiality.** All contacts, information obtained or exchanged, and representations made by the complainant, by the head of the office in which the complainant is employed, or by any witness and all other information obtained during the consultation process must be treated as confidential and "for official use only." The EDR Coordinator must inform the complaining and complained-of parties at the initial counseling stage how the notice provision in Part E of this Section may eventually affect the confidentiality of the complainant.
4. **Form of settlement.** The EDR Coordinator must reduce to writing any settlement achieved during the consultation process and acquire the signature of the employee; the employee's representative, if the employee is represented by legal counsel; and the member of the employing office authorized to settle. A copy of the settlement agreement must be provided to each party and to any adversely affected person. If the settlement requires the expenditure of any money from the court's budget or from the Administrative Office's budget, approval of the chief judge is necessary.

- D. **Duration of period for the consultation.** The consultation must not exceed thirty days, beginning the day after the request for consultation is received by the EDR Coordinator. The consultation period may be extended by the agreement of the EDR Coordinator and the employee for an additional thirty days. Additional extensions of time may only be approved by the chief judge.



- E. Conclusion of the consultation period and notice.** The EDR Coordinator must notify both the employee and the head of the employing office in writing of the end of the consultation process. As part of the notice, the EDR Coordinator must inform the employee of the right and obligation, if the employee chooses to pursue the claim, to file with the EDR Coordinator a request for mediation in accord with Section 6 of this Chapter.

## **§6 Mediation.**

### **A. Procedures.**

- 1. Request for mediation.** Not later than fifteen days after receiving notice of the end of the consultation, an employee may file a request for mediation with the EDR Coordinator. The request must be in writing on the form attached to this Plan as Form 2, must be signed under penalty of perjury, must identify the complainant and each involved person, and must include a short and plain statement of the complainant's claim and the relief or remedy sought.
- 2. Designation of mediator.** Within fifteen days after a request for mediation is received by the EDR Coordinator, the chief judge must designate a mediator and provide written notice of the designation to the person who filed the request for mediation.
- 3. Who may serve as mediator.** Any person with the skill to assist in resolving a dispute, except the court's EDR Coordinator, may serve as a mediator under this Plan. If the claim is that a judicial officer violated the rights protected by this Plan, the mediator must be a judicial officer designated by the chief judge of the circuit, after consultation with the chief judge of the district, unless either is the judicial officer who is the subject of the complaint, in which instance, the chief judge must be replaced in the consultation process by the next most senior active judge of the circuit or of the district.

4. **Purpose of mediation.** The mediator may meet separately, jointly, or both with the employee and the representative, if any, and the unit head or designee of the employing office to discuss resolving a dispute. The mediator may meet separately, jointly, or both with any other employee affected adversely by the proposed resolution of the dispute.
5. **Confidentiality.** No person involved in the mediation process may disclose, in whole or in part, any information obtained through, or prepared specifically for, the mediation process, except as necessary to consult with a party or their representative directly involved in this mediation process. However, to assess the credibility of an assertion made by a complainant or respondent, information regarding an allegation filed under this Plan may be shared on a need-to-know basis. In addition, if the employee files a complaint under Section 7 of this Chapter, the hearing officer must have access to the record of any claim raised in mediation. (This paragraph must not be interpreted as precluding or limiting private communication between a person and the person's representative or as requiring a record of those communications.) Once a matter enters the mediation stage and until final resolution of the complaint, a person allegedly involved in a violation of this Plan has the right to reasonable notice of the allegations by the complaining party and the right to a reasonable opportunity to respond to those allegations.
6. **Form of settlement.** The mediator must reduce to writing a settlement achieved during mediation and secure the signature of the employee; the employee's representative, if the employee is represented by legal counsel; and the member of the employing office authorized to settle. A copy of the settlement agreement must be provided to each party and to each adversely affected person. If the settlement requires the expenditure of any money from the court's budget or from the Administrative Office's budget, approval of the chief judge is required.

**B. Duration of mediation period.** The mediation period must not exceed thirty days, beginning the day after the request for mediation is

received by the mediator. The complainant must attend at least one mediation session. Thereafter, the complainant can file a complaint. The mediation period may be extended by the chief judge or by agreement of the mediator and the complainant.

- C. Conclusion of mediation period and notice.** If, at the end of the mediation period, the parties have not resolved the matter, the EDR Coordinator must provide the employee; the employee's representative, if any; and the head of the employing office written notice that the mediation period has concluded. The notice must include notice of the employee's right to complain under Section 7 of this Chapter. An employee can bring to the attention of the chief judge the fact that more than thirty days has elapsed after the beginning of the mediation period without the employee's receiving this notice.

## **§7 Complaint, review, and hearing.**

- A. Complaint.** Not later than fifteen days after receiving notice of the end of the mediation, an employee can file a complaint with the chief judge (or, if such person is disqualified or unavailable, with the next most senior active judge). The complaint must be in writing on the form attached to this Plan as Form 3, must be signed under penalty of perjury, must identify the complainant and the other involved persons, and must include a short and plain statement of the complainant's claim and the relief or remedy sought. A claim not presented in mediation is foreclosed. The respondent is the employing office responsible for redressing, correcting, or abating the violation alleged in the complaint. No person can be named as a respondent in the complaint.

**B. Review of pleadings.**

- 1. Reviewing official.** The complaint and any other pertinent documents must be reviewed by the chief judge of the court or by another judicial officer of the court designated by the chief judge. If the chief judge is disqualified under Section 4 of this Chapter or is unavailable to serve under this subsection, the next most senior active judge must designate the reviewing

official.

2. **Alleged violation by a judge.** If an employee alleges that a judge violated any right granted under this Plan, the claims procedures of this Chapter must be performed by the Judicial Council, either by members of the Council directly or by persons, which may include the chief judge of the circuit, designated to act on behalf of the Judicial Council. If a judge becomes the subject of both an EDR claim and a judicial misconduct complaint under the Judicial Conduct and Disability Act, 28 U.S.C. §§351-364, the Judicial Council or its designee, which may include the chief judge of the circuit, must craft a procedure for determining any common issue of fact and for processing both complaints, subject to all requirements of the Act, the Rules for Judicial-Conduct and Judicial-Disability Proceedings, and, as practicable, this Plan. The Council or its designee, who may include the chief judge of the circuit, may decide to abate all or part of the EDR claim until the resolution of the judicial conduct complaint.
3. **Review procedures.** At any time after a complaint is filed and after notice to the complainant and an opportunity to respond, the chief judge or designated judicial officer, in accord with the dismissal requirements in Section 2, Part F of this Chapter, may dismiss in writing any claim.

### C. **Hearing procedures.**

1. **Hearing officer.** If the chief judge or designated judicial officer does not dismiss the complaint under the preceding paragraph, the chief judge or designated judicial officer, acting as the hearing officer and absent a determination that no material factual dispute exists, must hold a hearing on the merits of the complaint.
2. **Specific provisions.** The presiding judicial officer may allow appropriate discovery and investigation. The presiding judicial officer must determine the time, place, and manner of conducting the hearing. However, the following specific

provisions apply to hearings conducted under this Section:

- a.** the hearing must begin no later than ninety days after the filing of the complaint unless the complainant agrees to a later hearing or unless good cause is shown and documented in writing by the presiding judge;
- b.** the complainant, the person the complainant accuses of having violated a right protected under the Plan, and the unit head of the office against which the complaint has been filed must receive written notice of the hearing;
- c.** at the hearing, the complainant and the respondent unit head have the right to legal representation, to present evidence, and to examine and cross-examine witnesses;
- d.** a verbatim record of the hearing must be kept and must be the sole official record of the proceeding;
- e.** in reaching a decision, the chief judge or designated judicial officer must be guided by judicial and administrative decisions under the law governing Chapters II through VII of this Plan;
- f.** a remedy may be provided in accord with Section 9 of this Chapter if the hearing officer finds that the complainant has established by a preponderance of the evidence the violation of a substantive right protected by this Plan;
- g.** the chief judge or the designated judicial officer must issue a decision in writing not later than 120 days after the hearing unless the complainant consents to a longer time or unless good cause is shown and documented in writing by the presiding judicial officer;
- h.** each party must receive written notice of any remedy or other action awarded as a result of a hearing; and
- i.** if the relief or remedy sought will adversely affect

another employee, that employee and that employee's representative, if any, enjoy the same right to notice of, and to participation in, the hearing.

**§8 Review of decision.** Within twenty-one days after the date of the letter transmitting the decision of the chief judge or the designated judicial officer, a party or person aggrieved by a final decision of the chief judge or designated judicial officer or by a summary dismissal of the complaint may petition for review of that decision under Chapter IX of this Plan.

**§9 Remedies.**

- A. A judicial officer who acts under Section 7 or 8 of this Chapter and who finds a violation of a substantive right protected by this Plan may order a necessary and proper remedy. A remedy can direct the correction of a past violation, ensure prospective compliance with a right protected by this Plan, or both. A remedy must be tailored as narrowly as possible to the specific violation involved.
- B. A judge's decision in an EDR matter must conform with statutes and regulations that apply to the judiciary and judges have no authority to declare such statutes or regulations unconstitutional or invalid.
- C. A judge presiding in an EDR matter may not compel the participation of, or impose remedies upon, an agency or entity other than the employing office that is the respondent in such matters.

Remedies available to a successful complainant under this Plan include, but are not limited to:

- 1. placement of an employee in a position previously denied;
- 2. placement in a comparable alternative position;
- 3. reinstatement to a position from which previously removed;
- 4. prospective promotion to a position;
- 5. priority consideration for a future promotion or placement in

another position for which the complaining party is qualified;

6. back pay and associated benefits, including attorney's fees, where the statutory criteria of the Back Pay Act, 5 U.S.C. § 5596, are satisfied;
7. records modification and/or expungement;
8. "equitable" relief, such as temporary stays of an adverse action;
9. granting of family and medical leave; and
10. accommodation of a disability through the purchase of specialized equipment or the restructuring of duties and work hours or other appropriate means.

**D.** Remedies unavailable to a successful complainant include:

1. payment of attorney's fees (except as authorized under the Back Pay Act);
2. compensatory damages; and
3. punitive or other exemplary damages.

## **CHAPTER IX. REVIEW PROCEDURES.**

**§1 Review of decision.** A party or person aggrieved by a final decision of the chief judge or designated judicial officer or by a summary dismissal of the complaint may seek review of that decision under the following procedures. Under the governing standard of review, the decision is affirmed if supported by substantial evidence on the record as a whole. The EDR Coordinator is responsible for submitting the complete record of the proceeding to the Circuit Executive for use by the Judicial Council.

**A. Time, place, and manner of filing a petition for review.** Within twenty-one days after the date of the letter transmitting the decision of the chief judge, a person aggrieved by a final decision of the chief judge or designated judicial officer or by a summary dismissal of the

complaint, may petition the Circuit Executive for review by the Judicial Council. A person must submit the petition for review on the form attached to this Plan as Form 4.

**B. Receipt of timely petition in proper form.** On receipt of a timely petition for review filed in the form required, the Circuit Executive must promptly acknowledge receipt of the petition and transmit a copy to the head of the court unit or office in which the complainant is employed, to the complained-of judicial officer (if any), and to the judicial officer who determined the matter (or other official who summarily dismissed the complaint). Neither the person filing the petition for review nor the judicial officer who determined the matter (or other official who summarily dismissed the complaint) may otherwise communicate with the Judicial Council or any of its members about the matter. Thirty days after the acceptance of a petition for review, the Circuit Executive must send to the Circuit's Equal Employment Opportunity Committee, and all non-disqualified members of the Judicial Council, copies of (1) the original complaint; (2) the record of proceedings; (3) the decision affecting the complaint; (4) the petition for review, and (5) the response, if any.

**C. Receipt of petition not in proper form or out of time.**

1. Upon receipt of a petition for review not filed in the form required, the Circuit Executive must return the petition with an explanation of the return. The party requesting review may refile the corrected petition for review with the Circuit Executive within fourteen days after receipt of the returned petition. A second failure to file in the form required will result in dismissal of the petition for review.
2. Failure of the party requesting review to file a petition within twenty-one days after the date of the letter transmitting the decision regarding the original complaint will result in the dismissal of the petition.

**D. Review of order.**



**Ballot.** The Judicial Council Equal Employment Opportunity Committee must consider the petition for review and the record provided by the Circuit Executive and recommend to the Judicial Council affirmance, reversal, or modification. The Circuit Executive must transmit to all non-disqualified members of the Judicial Council the Committee's recommendation along with a ballot that asks: (1) whether the decision of the hearing officer below should be affirmed; (2) whether the Judicial Council should consider the petition for review at the Judicial Council's next meeting; and (3) whether the Judicial Council member recuses from participation in consideration of the petition. If within fourteen days after the date on which the Circuit Executive sends ballots to the members of the Judicial Council, no member of the Judicial Council votes to consider the petition at the next Judicial Council meeting, the decision of the hearing officer is affirmed.

**E. Decision by Judicial Council.**

1. A petition for review placed on the agenda of a meeting of the Judicial Council must be decided by a majority of the non-disqualified members of the council present at the meeting.
2. The Judicial Council may (a) affirm the original decision or summary dismissal; (b) direct further investigation; or (c) direct corrective action including remedies set forth in Chapter VIII, Section 9 of this Plan. The Judicial Council may also take any other action within its authority pursuant to 28 U.S.C. §§332, 351-364.
3. A separate memorandum of findings and conclusions by the Judicial Council, including any dissent or concurrence by a member of the Judicial Council, may accompany the order of the Judicial Council.
4. The Circuit Executive must provide to the complainant and the complained-of official a copy of the order, including any findings, conclusions, dissent, or concurrence and must inform them that the Council's decision is final.

5. The Circuit Executive must transmit a copy of the complete order to the chief judge and maintain a summary record that clearly identifies the nature of the proceeding and the disposition reached.

**F. Complained-of judge.** A complained-of judge and the judge rendering the decision that initially determined the matter under review by the Judicial Council is disqualified from participating in any deliberation or decision by the Judicial Council about the matter.

**G. Withdrawal of petition.** A complainant may withdraw a petition for review at any time before the Judicial Council acts on the petition.

## **§2 Finality.**

The decision of the Judicial Council is final and not subject to further review.

## **CHAPTER X. OTHER PROVISIONS.**

### **§1 Annual Reports.**

The EDR Coordinator must annually provide to the court for review, approval, and submission to the Administrative Office of the United States Courts a report on the implementation of this Plan. This report shall be in the format and contain such information prescribed by the Administrative Office for inclusion in the Director's Annual Report to the Judicial Conference.

### **§2 Notice of Plan.**

A copy of this Plan and any modification of this Plan must appear on the internal and external websites of the court. Employing offices (unit head) must maintain an electronic or paper record of an employee's acknowledgment of receipt of notice of access to a copy of this Plan. Also, a copy of this Plan and any modifications must be filed with the Administrative Office.

**§3     Effective date.**

This Plan becomes effective immediately upon approval by the Board of Judges of the Northern District of Florida and the Judicial Council of the Eleventh Circuit.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA**

**EMPLOYMENT DISPUTE RESOLUTION  
CONFIDENTIAL COMPLAINT AND REQUEST FOR CONSULTATION**

TO: \_\_\_\_\_, EDR Coordinator.  
(Insert Name of EDR Coordinator)

FROM: \_\_\_\_\_  
(Insert Your Name as Complainant)

**GENERAL INFORMATION**

1. Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_
2. Work Telephone: \_\_\_\_\_ Home Telephone: \_\_\_\_\_
3. If you are now a court employee, provide your job title and the pay classification of your position:  
\_\_\_\_\_  
\_\_\_\_\_

**COMPLAINT**

4. Identify the basis for this complaint by checking the box to indicate each basis for this complaint.

<input type="checkbox"/> Race	<input type="checkbox"/> Color	<input type="checkbox"/> National Origin	<input type="checkbox"/> Age
<input type="checkbox"/> Religion	<input type="checkbox"/> Sex	<input type="checkbox"/> Disability	

5. Provide the date of any alleged violation:

\_\_\_\_\_  
\_\_\_\_\_

6. Identify by name and position any person you believe violated your rights under the Employment Dispute Resolution Plan.

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7. For all complaints under the Employment Dispute Resolution Plan, please concisely describe your complaint and how you were improperly treated or treated differently from other employees or applicants. You must also specify the provision of the Employment Dispute Resolution Plan that specifies the right you believe was violated. If additional space is required, you may use and attach one additional page to this complaint.

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### REQUEST FOR CONSULTATION

8. Provide a description of the corrective action you seek under the Employment Dispute Resolution Plan.

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9. If you are represented by an attorney in this matter, provide the name, address, and telephone number for the attorney providing legal representation.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**SIGNATURE**

I affirm, under penalty of perjury and to the best of my knowledge that the statements contained on this form and all attached documentation are true and correct.

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Signature of Claimant

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Date

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA**

**EMPLOYMENT DISPUTE RESOLUTION  
CONFIDENTIAL COMPLAINT**

TO: \_\_\_\_\_, Chief Judge.  
(Insert Name of Chief Judge)

FROM: \_\_\_\_\_  
(Insert Your Name as Complainant)

**COMPLAINT**

Within the preceding fifteen days, the undersigned was notified of the conclusion of mediation under Chapter IX, Section 6 (C) of this court's Employment Dispute Resolution Plan. Pursuant to Chapter IX, Section 7, I submit the complaint described below.

1. Identify the basis of the complaint alleged, by checking the appropriate boxes below.

- |                                   |                                |  |                              |
|-----------------------------------|--------------------------------|--|------------------------------|
| <input type="checkbox"/> Race     | <input type="checkbox"/> Color | <input type="checkbox"/> National Origin | <input type="checkbox"/> Age |
| <input type="checkbox"/> Religion | <input type="checkbox"/> Sex   | <input type="checkbox"/> Disability      |                              |

2. Provide the date of any alleged violation:

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3. Identify by name and position any person you believe violated your rights under the Employment Dispute Resolution Plan.

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4. For all complaints under the Employment Dispute Resolution Plan, please concisely describe your complaint and how you were improperly treated or treated differently from other employees or applicants. You must also specify the provision of the Employment Dispute Resolution Plan that specifies the right you believe was violated. If additional space is required, you may use and attach one additional page to this complaint.

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### REQUEST FOR MEDIATION

5. Provide a description of the corrective action you seek under the Employment Dispute Resolution Plan.

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6. If you are represented by an attorney in this matter, provide the name, address, and telephone number for the attorney providing legal representation.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

### SIGNATURE

I affirm, under penalty of perjury and to the best of my knowledge that the statements contained on this form and all attached documentation are true and correct.

\_\_\_\_\_  
Signature of Claimant

\_\_\_\_\_  
Date



**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA**

**EMPLOYMENT DISPUTE RESOLUTION  
CONFIDENTIAL COMPLAINT**

TO: \_\_\_\_\_, Chief Judge.  
(Insert Name of Chief Judge)

FROM: \_\_\_\_\_  
(Insert Your Name as Complainant)

**GENERAL INFORMATION**

1. Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_
2. Work Telephone: \_\_\_\_\_ Home Telephone: \_\_\_\_\_
3. Provide the name of court unit responsible for redressing, correcting, or abating the violation alleged in this complaint (e.g., district court clerk's office, bankruptcy court clerk's office, probation, etc.).  
\_\_\_\_\_

**COMPLAINT**

4. Set forth a short and plain statement of all claims asserted. If additional space is required, you may use and attach one additional page to this complaint.

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### REMEDY SOUGHT

5. Provide a description of the relief or remedy sought.

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6. If you are represented by an attorney in this matter, provide the name, address, and telephone number for the attorney providing legal representation.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

### SIGNATURE

I affirm, under penalty of perjury and to the best of my knowledge that the statements contained on this form and all attached documentation are true and correct. I agree to cooperate to the fullest extent reasonably possible with all efforts to investigate and address matters raised in this complaint.

\_\_\_\_\_  
Signature of Claimant

\_\_\_\_\_  
Date

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA**

**EMPLOYMENT DISPUTE RESOLUTION  
CONFIDENTIAL PETITION FOR REVIEW BY THE  
ELEVENTH CIRCUIT JUDICIAL COUNCIL**

TO: \_\_\_\_\_, Circuit Executive.  
(Insert Name of Circuit Executive)

FROM: \_\_\_\_\_  
(Insert Your Name as Complainant)

**GENERAL INFORMATION**

1. Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_
2. Work Telephone: \_\_\_\_\_ Home Telephone: \_\_\_\_\_
3. Provide the name of court unit responsible for redressing, correcting, or abating the violation alleged in this complaint (e.g., district court clerk's office, bankruptcy court clerk's office, probation, etc.).  
\_\_\_\_\_

**PETITION FOR REVIEW**

By filing this Petition for Review with the Circuit Executive of the Eleventh Circuit, I request review by the Circuit Judicial Council of the attached decision of the Chief Judge or other designated hearing officer of the United States District Court for the Northern District of Florida. I contend that this decision is not supported by substantial evidence on the record as a whole and for the specific reasons stated below.

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4. If you are represented by an attorney in this matter, provide the name, address, and telephone number for the attorney providing legal representation.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**SIGNATURE**

I affirm, under penalty of perjury and to the best of my knowledge that the statements contained on this form and all attached documentation are true and correct.

Signature of Claimant

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Date